IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14059 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INFINITIVE PHARMACEUTICALS INDUSTRIES

Versus

GIRDHARLAL JETHABHAI PANDYA & ANOTHER

Appearance:

1. Special Civil Application No. 14059 of 2003

MR SK JHAVERI with MR MEHUL H RATHOD for the Petitioner

MR NM KAPADIA for Respondents Nos. 1,2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 28/04/2005

ORAL JUDGEMENT

Heard the learned advocates.

This petition preferred under Article 227 of the Constitution of India arises from the order dated 18th July, 2003 made by the learned City Civil Judge, Ahmedabad below application Exh.10 in Summary Suit No.4652/2001. The petitioner is the plaintiff in the said suit.

The petitioner has instituted the above referred Summary Suit No.4652/2001 in the City Civil Court, Ahmedabad against the respondents for recovery of a sum of Rs.1,86,98,064=32ps. being the amount payable by the defendant to the plaintiff for the finished goods supplied under the agreement dated 4th December, 1997. The defendant filed application Exh.10 for leave to defend as envisaged by Order 37 Rule 3 CPC. By impugned order the learned Judge has held that the plaintiff has failed to make out a case under Order 37 Rule 1 CPC and has granted unconditional leave to defend to the respondent. Hence, the present petition.

Learned advocate Mr.Jhaveri has drawn my attention to the suit agreement dated 4th December, 1997 particularly clauses 4 and 7 thereof. He has submitted that the respondent had agreed to pay the amount of the raw-material cost and the freight @ 1% and the octroi charges on the finished goods and had also agreed to pay a sum of Rs.2,50,000=00 every month towards the labour charges, electricity consumption, etc. He has submitted that the said amount has admittedly not been paid by the respondent. The respondent, therefore, should not have been granted unconditional leave to defend and a condition atleast to deposit the said amounts payable under clauses 4 and 7 should have been imposed.

Learned advocate Mr.Kapadia has contested the petition. He has submitted that as held by the learned City Civil Judge the suit under Order 37 Rule 1 CPC is not maintainable at all. The learned Judge has rightly granted unconditional leave to defend to the defendant. He has also relied upon the record produced before the trial Court and has submitted that the respondent has paid the whole of the amount payable under the suit agreement and nothing now remains outstanding against the respondent. He has also read out application for leave to defend and has submitted that in any view of the matter the respondent has made out triable issue. The respondent is, therefore, entitled to unconditional leave to defend.

The learned City Civil Judge has considered the provisions contained in Order 37 Rule 1 CPC and has held

that the petitioner has failed to bring the case within the purview of Order 37 Rule 1(1) and Order 37 Rule 1(2) CPC as neither the suit is based on Bill of Exchange, Hundi or Promissory Note nor it is for recovery of debt or of liquidated demand in money payable by the respondent.

I am in agreement with the learned City Civil Judge. No interference is warranted. The petition is dismissed. Rule is discharged. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf